

Message Text

CONFIDENTIAL

PAGE 01 GENEVA 06700 01 OF 03 031001Z

ACTION DLOS-09

INFO OCT-01 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01
CEQ-01 CG-00 CIAE-00 COME-00 DODE-00 DOTE-00
EB-08 EPA-01 SOE-02 DOE-15 FMC-01 TRSE-00 H-01
INR-10 INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05
NSF-01 OES-07 OMB-01 PA-01 PM-05 SP-02 SS-15
ICA-11 AF-10 ARA-10 EA-10 EUR-12 NEA-11 OIC-02
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P 030943Z MAY 78

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TO SECSTATE WASHDC PRIORITY 9137

C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06700

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS CONFERENCE - APRIL 28 HIGHLIGHTS

BEGIN SUMMARY: KOH GROUP (NG-2) AND ENGO GROUP (NG-3)
CONTINUED DELIBERATION ON FINANCIAL ARRANGEMENTS AND THE
COMPOSITION OF THE ORGANS OF THE AUTHORITY RESPECTIVELY.
COMMITTEE II CONTINUES TO REVIEW NON-HARD CORE ISSUES,
CHAIRMAN YANKOV WARNED THAT THE "COMPROMISE" ACHIEVED IN
THE COM III SECTION OF THE ICNT COULD BE UPSET IF DELEGA-
TIONS ATTEMPTED TO ALTER THE TEXT. THE SUBGROUP OF
NG-5 DISCUSSED THE JAPANESE AND PERUVIAN PROPOSALS FOR
ARTICLE 296(4). END SUMMARY

1. THE COMMITTEE I MEETING FORMALLY ESTABLISHED NG-3 (ON
ORGANS OF THE AUTHORITY) AND THE NEGOTIATING GROUP OPENED
WITH THE COMPOSITION OF THE COUNCIL AND VOTING PROCEDURES.
A PROPOSAL (ORIGINATED BY MEXICO) FOR A REDRAFT OF ARTICLE
159, PARA 1 (RESULTING FROM THE SUB-GROUP CHAIRED BY
EGYPT) MET WITH LITTLE ENTHUSIASM ON BOTH SUBSTANTIVE
AND PROCEDURAL GROUNDS.

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PAGE 02 GENEVA 06700 01 OF 03 031001Z

2. THE KOH GROUP (NG-2ON FINANCIAL ARRANGEMENTS)
CONTINUED DISCUSSION ON FINANCIAL TERMS OF CONTRACTS. KOH
PROPOSED PROVISIONAL ACCEPTANCE OF \$250,000 AS A COMPROMISE
FIGURE FOR THE APPLICATION FEE, AS AN ALTERNATIVE TO THE
JAMAICAN PROPOSAL TO LET THE AUTHORITY FIX THE FEE TO
CORRESPOND TO ACTUAL COSTS. A DECISION ON THIS MATTER

WAS POSTPONED IN FAVOR OF PROCEEDING WITH OTHER ASPECTS OF REVENUE SHARING. CONSIDERABLE DISCUSSION FOLLOWED ON AN ANNUAL FIXED CHARGE TO MINE AND WHETHER OR NOT ITS PURPOSE WAS LIMITED TO ENSURING DILIGENCE OF MINERS. THE U.S. AND OTHER DEVELOPED COUNTRIES STATED THIS WAS ITS PURPOSE AND IT WAS, THEREFORE, NOT NECESSARY; BUT IF IT WERE INSTITUTED THE U.S. STATED THAT IT SHOULD BE SOMETHING ON THE ORDER OF 25 PERCENT OF ROYALTY PAYMENTS AFTER THE THIRD YEAR OF PRODUCTION. DEVELOPING COUNTRIES SUPPORTED AN ANNUAL FIXED CHARGE AS INTENDED FOR REVENUE PRODUCING PURPOSES.

3. COMMITTEE II REVIEWED THE NON-HARD CORE ISSUES CONSIDERED INSUFFICIENTLY DEBATED. CHAIRMAN AGUILAR SAID THIS WAS AN OPPORTUNITY FOR DELEGATIONS TO RESTATE POSITIONS EVEN THOUGH THEIR VIEWS IN PAST SESSIONS HAD FAILED TO GAIN MAJORITY SUPPORT. AGUILAR DISCOURAGED GENERAL DEBATE AND EMPHASIZED THAT HIS PLENARY REPORT WOULD NOTE THE PROPOSALS SUBMITTED, ALTHOUGH WITHOUT AN ASSESSMENT OF ACCEPTABILITY UNLESS A PROPOSAL HAD EVOKED OVERWHELMING SUPPORT. SPAIN SUGGESTED, AND IT WAS DECIDED, THAT THERE WOULD BE AN ARTICLE-BY-ARTICLE CONSIDERATION OF THE COMMITTEE II TEXT RATHER THAN A REVIEW OF AMENDMENTS. (THE AMENDMENTS PROPOSED WILL BE POUCHED TO DEPARTMENT.)

4. PROPOSALS WERE SUBMITTED TO AMEND THE FOLLOWING
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PAGE 03 GENEVA 06700 01 OF 03 031001Z

ARTICLES: A) ARTICLE 1 - BY PERU, TO ADD A REFERENCE AND DEFINITION OF "FISHING ACTIVITIES." DEFINITION SHOULD REFER TO ALL EXTRACTIONS OF A BIOLOGICAL NATURE. JAPAN OPPOSED.

B) ARTICLE 2 - IN ART. 2(1), PERU, SUPPORTED BY SPAIN, SAID "LAND TERRITORY" SHOULD BE REPLACED BY "COASTLINE."

C) ARTICLE 3 - AN FRG AMENDMENT WOULD PRECLUDE THE QUESTION OF A 12-MILE TERRITORIAL SEA IF THE EFFECT WERE TO CUT OFF FROM THE HIGH SEA (INCLUDING THE EEZ) THE TERRITORIAL SEA OF ANOTHER STATE. SUPPORTED BY: UK, TURKEY, DENMARK, NETHERLANDS, AND BELGIUM. OPPOSED BY: PERU, ECUADOR, IRAN, BRAZIL, MADAGASCAR, MALAYSIA, GREECE, GDR, CZECHOSLOVAKIA, EL SALVADOR, INDONESIA, SOMALIA, SENEGAL, BULGARIA, USSR, POLAND, AND YEMEN.

FRANCE SAID THE FOLLOWING LANGUAGE IN ARTICLE 3 COULD PROVIDE THE PROTECTION WHICH THE FRG AND OTHERS SOUGHT: "WHEN THE EXERCISE OF RIGHTS DEFINED IN THIS ARTICLE BRINGS ABOUT AN INCLUSION IN THE TERRITORIAL SEA AREAS

CONSIDERED AS HIGH SEAS AND CUTS OFF FROM THE HIGH SEAS
THE TERRITORIAL SEA OF ANOTHER STATE, RIGHTS OF FREE
PASSAGE OF NAVIGATION AND OVERFLIGHT SHALL BE PRESERVED."
SUPPORTED BY: IRAQ, MALAYSIA, DENMARK, NETHERLANDS,
BELGIUM, UK.

D) ARTICLE 7 - BANGLADESH INTRODUCED A MODIFIED
VERSION OF ITS PROPOSAL ON STRAIGHT BASELINES CONNECTING
BASE POINTS OFFSHORE AT THE EDGE OF THE "SUBMERGED SEDI-
MENTARY DELTA". SUPPORTED BY: PRC, PAKISTAN, TURKEY,
INDONESIA, UAE, EGYPT, SOMALIA, LIBYA, YUGOSLAVIA, ROMAN-
IA, SENEGAL, PERU, ECUADOR, IRAQ, BELGIUM, MALTA,
BAHRAIN, MOROCCO, CUBA, POLAND AND UGANDA. AUSTRIA
VIEWED THIS FAVORABLY AND BELIEVED IT SHOULD BE CONSIDER-
ED. INDIA, WHICH WOULD BE MOST EFFECTED BY THE AMEND-
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PAGE 04 GENEVA 06700 01 OF 03 031001Z

CONFIDENTIAL

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PAGE 01 GENEVA 06700 02 OF 03 031008Z
ACTION DLOS-09

INFO OCT-01 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01
CEQ-01 CG-00 CIAE-00 COME-00 DODE-00 DOTE-00
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P 030943Z MAY 78
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TO SECSTATE WASHDC PRIORITY 9138

C O N F I D E N T I A L SECTION 02 OF 03 GENEVA 06700

MENT, ARGUED THAT TWO MAJOR CONSIDERATIONS HAD TO BE
WEIGHED: (I) HOW FAR FROM THE COASTLINE THE LINES WOULD
EXTEND AND (II) THE CONSEQUENT EFFECT ON THE MARITIME
AREAS OF OTHER STATES. INDIA EFFECTIVELY KILLED THE
PROPOSAL FOR THIS SESSION. BURMA ALSO EXPRESSED MIS-
GIVINGS.

E) ARTICLE 16 - PERU SUGGESTED IN PARA 2 A REFERENCE TO THE RIGHT OF THIRD STATES TO OBJECT TO PUBLISHED CHARTS, ESPECIALLY THOSE NOT IN CONFORMITY WITH INTERNATIONAL STANDARDS.

F) ARTICLE 17 - THE PRC SUGGESTED MAKING A CLEAR DISTINCTION BETWEEN WARSHIPS AND COMMERCIAL VESSELS IN RESPECT OF INNOCENT PASSAGE WITH PASSAGE FOR THE FORMER REQUIRING PRIOR AUTHORIZATION AND/OR NOTIFICATION. SUPPORTED BY: ARGENTINA, PERU, ALBANIA, PAKISTAN, ROK, ANGOLA, ECUADOR, UAE, MADAGASCAR, ROMANIA, SYRIA, TURKEY, GHANA AND YEMEN. OPPOSED BY IRAQ. THE PHILIPPINES WOULD ALSO APPLY THIS DISTINCTION TO ALL NUCLEAR-POWERED VESSELS, VESSELS CARRYING NUCLEAR
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PAGE 02 GENEVA 06700 02 OF 03 031008Z

MATERIALS, AND SUPERTANKERS.

G) ARTICLE 19(2)(H) - CANADA WANTED "WILLFUL AND SERIOUS" DELETED BECAUSE IT SETS AN UNACCEPTABLE HIGH STANDARD FOR CULPABILITY WHICH COULD RESTRICT THE ENFORCEMENT POWERS OF COASTAL STATES. SUPPORTED BY: HONDURAS, INDONESIA. (THIS ISSUE IS ALSO BEING DEBATED IN COMMITTEE III.)

H) ARTICLE 19(2)(L) - FRG WANTS "SIMILAR" TO BE INSERTED BETWEEN "OTHER" AND "ACTIVITY" TO PRESERVE OBJECTIVE CRITERIA DEFINING NON-INNOCENT PASSAGE. SUPPORTED BY: JAPAN, ITALY, UA, USSR, CUBA, AUSTRALIA, AND GDR. OPPOSED BY: HONDURAS, GUINEA-BISSAU, BRAZIL, PERU, ECUADOR, AND ARGENTINA.

5. A SUB-GROUP OF NG-5 (ON DISPUTE SETTLEMENT IN THE ECONOMIC ZONE) MET UNDER CHAIRMAN STAVROPOLOUS TO DRAFT A COMPROMISE PROPOSAL ON THE SETTLEMENT OF FISHERIES DISPUTES IN THE ECONOMIC ZONE. THE SUB-GROUP IS COMPOSED OF 15 MEMBERS FROM THE LL/GDS, COASTAL STATE, AND OTHER GROUPS APPOINTED BY THE CHAIRMAN AND ONE ADDITION. THEY ARE MADAGASCAR, MEXICO, NORWAY, PAKISTAN, CHILE AND PERU, AUSTRIA, BAHRAIN, SINGAPORE, SWAZILAND AND SWITZERLAND; FRANCE, JAPAN, PORTUGAL, USSR AND US. (CHILE WAS ADDED AT ITS OWN REQUEST.)

6. JAPAN AND PERU CIRCULATED PROPOSALS FOR REVISION OF ARTICLE 296(4) WHICH BECAME THE BASIS FOR THE DISCUSSION. BOTH UTILIZE THE CONCEPT OF ABUSE OF RIGHTS AND EMPLOY COMPULSORY CONCILIATION. THE JAPANESE TEXT WOULD, HOWEVER, GRANT CONSIDERABLY MORE JURISDICTION TO THIRD-PARTY SETTLEMENT THAN WOULD THE PERUVIAN. PERHAPS THE MOST PROMISING AREA OF AGREEMENT IN THE DISCUSSION IS

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PAGE 03 GENEVA 06700 02 OF 03 031008Z

THE RECOGNITION, IN PRINCIPLE, THAT THIRD-PARTY SETTLEMENT SHOULD APPLY IN CONSERVATION MATTERS AS WELL AS IN THE CASE OF FAILURE BY THE COASTAL STATE TO EXERCISE ITS DISCRETION OR TO GRANT ENTITLED STATES ANY SHARE OF SURPLUS AT ALL. AT THE CLOSE OF THE MEETING, PERU COMBINED ITS PROPOSAL WITH PORTIONS OF THE JAPANESE ONE.

7. YANKOV CAUTIONED COMMITTEE III THAT THE COMPROMISE IN HIS PART OF THE ICNT WAS DELICATE AND HE WARNED THAT ATTEMPTS TO ALTER THE TEXT COULD UPSET THE "BALANCE." DENMARK, ON BEHALF OF THE EEC-9, SUGGESTED CHANGES IN THE DISPUTE SETTLEMENT ARTICLE 265 AND REFERRED TO THE CASTANEDA GROUP TEXT FROM THE SIXTH SESSION. YANKOV REVIEWED THE CASTANEDA NEGOTIATIONS AND CLAIMED SOME ALTERATIONS IN THAT COMPROMISE LANGUAGE WERE NECESSARY TO IMPROVE PROSPECTS FOR CONSENSUS. THE USSR SAID IT WAS NOT SATISFIED WITH THE ICNT BUT WOULD NOT OFFER AMENDMENTS IF OTHERS WOULD EXERCISE SIMILAR RESTRAINT.

8. THE US REP (WULF) OPPOSED THE YANKOV VIEW AND SOUGHT REINSTATEMENT OF THE CASTANEDA TEXT. (FULL STATEMENT

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PAGE 01 GENEVA 06700 03 OF 03 031010Z
ACTION DLOS-09

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P 030943Z MAY 78

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TO SECSTATE WASHDC PRIORITY 9139

C O N F I D E N T I A L SECTION 03 OF 03 GENEVA 06700

REPORTED SEPTEL.) AT THE FIRST MENTION OF THE NEGOTIATED TEXT (READ CASTANEDA), THE BRAZILIAN REP STRESSED THAT THE NEGOTIATED TEXT DID NOT RESULT FROM THIRD COMMITTEE EFFORTS AND REFERENCES TO CHANGES IN THE CASTANEDA TEXT COULD ONLY BE CONSTRUED AS AN ATTACK ON THE YANKOV'S INTEGRITY. YANKOV AGREED THAT NEGOTIATIONS WERE CONDUCTED OUTSIDE OF THE COMMITTEE AND GAVE A FULL REPORT ON ITS ACTIVITIES. WULF NOTED THAT THE RESULTS OF THE CASTANEDA NEGOTIATIONS WERE REPORTED IN FULL TO THE COMMITTEE AND THAT THERE HAD BEEN NO BRAZILIAN OBJECTION. WULF SAID THERE WAS NO SIGNIFICANT OPPOSITION IN THE COMMITTEE AS A WHOLE AND THAT THE US COULD NOT ACCEPT THE VIEW THAT THE CHANGES IN THE CASTANEDA TEXT WERE NECESSARY TO INCREASE PROSPECT OF CONSENSUS.

9. FROM THOSE REPRESENTED IN CASTANEDA GROUP, ONLY AUSTRALIA ALSO SPOKE IN FAVOR OF RETURNING TO THE NEGOTIATED TEXT. VIRTUALLY ALL DEVELOPING COUNTRIES WHO SPOKE DELIVERED INTERVENTIONS SIMILAR TO THAT OF THE USSR. AN EXCEPTION WAS YUGOSLAVIA, WHICH SOUGHT CHANGES SUBJECTING SCIENCE IN THE AREA TO THE AUTHORITY'S CONFIDENTIAL

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PAGE 02 GENEVA 06700 03 OF 03 031010Z

TROL. YANKOV CONCLUDED THE MEETING BY STATING THAT BASED ON PRESENT CIRCUMSTANCES HE COULD NOT CHANGE THE ICNT. HOWEVER, IF OUTSIDE NEGOTIATIONS RESULTED IN CHANGES WHICH SUBSTANTIALLY INCREASED THE PROSPECTS OF CONSENSUS HE WOULD REFLECT THOSE CHANGES IN THIS NEW TEXT. RICHARDSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, FINANCIAL AGREEMENTS, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 03 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA06700
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780188-0441
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From: GENEVA
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1978/newtext/t19780599/aaaadgdg.tel
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Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
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Review Event:
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Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2808545
Secure: OPEN
Status: NATIVE
Subject: LOS CONFERENCE - APRIL 28 HIGHLIGHTS BEGIN SUMMARY: KOH GROUP (NG-2) AND ENGO GROUP (NG-3) CONTINUED DELIBERATION ON FINANCIAL ARRANGEMENTS A
TAGS: PLOS
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/1f4123a5-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014